

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF NEWPORT BEACH
AND
THE NEWPORT BEACH
LIFEGUARD MANAGEMENT ASSOCIATION**



January 1, 2009 through December 31, 2011

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**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF NEWPORT BEACH AND
THE NEWPORT BEACH LIFEGUARD MANAGEMENT ASSOCIATION**

This Memorandum of Understanding (hereinafter referred to as "MOU") is entered into with reference to the following:

PREAMBLE

1. Authorized representatives of the CITY OF NEWPORT BEACH (hereinafter referred to as "CITY") and authorized representatives of the NEWPORT BEACH LIFEGUARD MANAGEMENT ASSOCIATION (hereinafter referred to as "NBLMA") a recognized employee organization, met and conferred, exchanging various proposals concerning wages, hours, fringe benefits and other terms and conditions of employment of employees represented by NBLMA (hereinafter referred to as "EMPLOYEES") for the period of January 1, 2009 through December 31, 2011.
2. NBLMA representatives have reached an agreement as to wages, hours and other terms and conditions of employment to apply to all affected EMPLOYEES for the time period defined above. Said EMPLOYEES desire to reduce their agreement to writing, and to present such agreement, in the form of this MOU, to the City Council of the City of Newport Beach for approval.

NOW, THEREFORE, this MOU is made and entered into by the parties hereto effective January 1, 2009, as follows:

SECTION 1. GENERAL PROVISIONS

A. Duration of Memorandum

The terms of this MOU are to remain in full force and effect beginning January 1, 2009 through December 31, 2011.

B. Scope

1. All present written rules and currently established practices and employee rights, privileges and benefits that are within the scope of representation shall remain in full force and effect during the term of this MOU unless specifically amended by the provisions of this MOU, or in the case of the Department Standard Operating Procedures (SOPs) falling within the scope of representation, the City has given notice to the Association and, upon request, met and conferred on any proposed changes which fall within the scope of representation.

When the Department proposes to change any SOP departmental rule or regulation, it will provide a copy of such change to the Association no less than seven (7) days prior to implementation of the proposed change. If such proposed change materially impacts any matter within the scope of representation, then the parties agree to meet and confer over such impact.

2. Pursuant to this MOU, the City reserves and retains all of its inherent exclusive and non-exclusive managerial rights, powers, functions and authorities ("Management Rights") as set forth in Resolution No. 2001-50.

C. Conclusiveness

Except as provided for in this agreement, this MOU contains all of the covenants, stipulations and provisions agreed upon by the parties. Therefore, for the life of this MOU, neither party shall be compelled and each party expressly waives its rights to request the other to meet and confer concerning any issue relating primarily to matters within the scope of representation except as expressly provided for herein or by mutual agreement of the parties. No representative of either party has the authority to make and none of the parties shall be bound by any statement, representation or agreement, which is not embodied in this MOU.

Any changes to any salaries, benefits or terms and conditions of employment within the scope of representation not embodied in this MOU shall require prior mutual agreement signed by the Mayor and the Newport Beach Lifeguard Management Association President.

D. Savings

Should any part of this MOU or any provision herein contained be rendered or declared invalid, by reason of any existing or subsequently enacted Legislation, or by decree of a Court of competent jurisdiction, such invalidation of such part or portion of this MOU shall not invalidate the remaining portion hereto, and same shall remain in full force and effect; provided, however, that should the provisions of this MOU relating to pay schedule adjustment increases be declared invalid, CITY agrees to provide alternate benefits agreeable to NBLMA, to EMPLOYEES to receive the same amount of money as they would have received had such provision not been declared invalid.

E. Other Terms and Conditions

Except as to those matters expressly covered by this MOU, all terms and conditions of employment may be changed or amended after meeting and conferring, in good faith.

F. Unit Classification Titles

Unit classifications are listed in Exhibit A.

For all compensation comparison purposes, actual job duties, and not classification titles, will be utilized.

SECTION 2. COMPENSATION

A. Salary Adjustments

Salaries shall remain unchanged for the term of this agreement.

B. Special Assignment Pay

Lifeguard Captains certified for and assigned to boat operations shall receive additional compensation of 2.5% of base salary for their job classification.

C. Overtime

Unit employees shall receive overtime compensation for all hours worked in excess of forty (40) in any work period. Paid time off shall be considered time worked for the purposes of calculating overtime.

Unit employees shall have the option of requesting compensatory time off (CTO) for all overtime, including training time, during the term of this agreement. All compensatory time off shall be subject to existing City rules providing for maximum (CTO) accrual of eighty (80) hours at time and one half on the books or 120 actual hours.

D. Uniform Allowance

The City shall pay the entire cost of providing LMA members with each component of the required LMA uniforms. The required LMA uniform includes uniform pants, uniform shirts, safety shoes, badges and insignias, uniform jackets and liners, belts, dive equipment, foul weather gear, personal floatation device and helmet. The City shall not be responsible for providing employees with socks, underwear, cap, workout shoes, or other clothing.

The City shall report the value of provided uniforms at \$838 to PERS in accordance with PERS requirements.

E. Call Out

Call out compensation shall be in accordance with the following provisions:

1. All emergency call out time shall be calculated to the nearest one quarter (1/4) hour of time worked.
2. For forty (40) hour employees, a minimum of two (2) hours (including travel time) of pay at the rate of one and one half (1 1/2) times the employee's regular hourly rate of pay shall be guaranteed for each emergency call out.

F. Scholastic Achievement Pay

NBLMA members are entitled to additional compensation contingent upon scholastic achievement ("Scholastic Achievement Pay"). LMA members may apply for increases pursuant to this Section when eligible and scholastic achievement pay shall be included in the member's pay check for the pay period immediately after approval by the Fire Chief. It is the responsibility of the LMA member to apply for Scholastic Achievement Pay. Approval of the member's application shall not be unreasonably withheld or delayed, and the member shall not be entitled to receive scholastic achievement pay prior to the date the application is approved even though the member may have been eligible prior to approval. Scholastic achievement pay is contingent upon years of full-time service as a NBLMA member and number of units and/or degrees received by the employee. Qualifying units and/or degrees must be awarded by accredited community colleges, state colleges or universities. LMA members shall receive scholastic achievement pay in accordance with the following:

<u>Years of Service</u>	<u>Total College Semester Units</u>	<u>% of Actual Step in Job Class Range</u>
2 or more	30	1.5%
3 or more	60	2.5%
3	90	3.5%
4 or more	90	3.5%
4	120	4.5%
4	B.A./B.S.	5.5%
4	M.A./M.S.	6.5%

G. Night Standby

An employee assigned to standby duty for purposes of being on call to handle emergency situations arising at times other than during normal working hours shall be guaranteed two (2 1/2) and a half hours of pay at his regular hourly rate of pay for each calendar day of such standby duty. Employees shall have the option of receiving compensatory time off in lieu of pay for night standby.

All unit employees shall be required to maintain residency within thirty (30) minutes driving time from the Marine Safety Headquarters in order to be eligible

for standby duty. Driving time shall be defined as driving the most direct route at the posted speed limit.

H. Move-up Pay

Temporary upgrading shall be defined as the temporary assignment of an employee to work in a job classification, which is assigned to a salary schedule higher than his/her regular job classifications.

Employees temporarily upgraded to the following job classifications and equivalent positions shall receive a five percent (5%) pay differential over their regular rate of pay for all time worked in the higher job classification if they are assigned to work in the higher job classification for a period of one (1) working hour or longer.

Lifeguard Captain
Lifeguard Battalion Chief

All holiday, vacation, sick leave and paid leave shall be paid at the employee's regular rate of pay.

Assignments to higher rated classifications shall be made at the sole discretion of the City.

I. Court Standby Pay

NBLMA members who, pursuant to Subpoena compelling attendance to testify to acts, observations, or omissions occurring in the course and scope of employment or at the direction of their supervisor, are required, while off-duty, to remain within a certain response time from court, shall be considered to be on "court standby time" and shall receive four hours of pay for each eight hours of court standby time. NBLMA members shall, when required to appear in court pursuant to a Subpoena or the direction of their supervisor to testify at matters relating to their employment with the City, be considered to be on duty and shall be paid accordingly. Members shall remit all witness fees received for testifying or appearing on any matter for which the member is eligible to receive court standby time.

SECTION 3. LEAVES

A. Flex Leave

All employees hired after July 1, 1990 will be included in the Flexible Leave Program. Within 60 days of the signing of this Memorandum of Understanding all unit members still in the vacation/sick leave program may, collectively, elect to

convert to the flex leave program. Conversion terms shall be the same as those utilized during the initial establishment of the flex leave program.

1. Basis for Accrual

Permanent full-time employees enrolled in the flex leave program will earn leave in accordance with the following schedule:

<u>Years of continuous Service</u>	<u>Accrual per pay period/hrs</u>	<u>Longevity Pay Increase</u>
1 but less than 5	5.54	0
5 but less than 9	6.15	0
9 but less than 12	6.77	0
12 but less than 16	7.69	0
16 but less than 20	7.69	1.0%
20 but less than 25	7.69	1.5%
25 and over	7.69	2.5%

During the first six months of employment, new regular full-time employees shall not accrue paid leave. At the completion of six months of employment six (6) months of accrued flex leave will be placed in the employees account.

Note: If an employee becomes sick in the first six months of employment, the City will advance up to six (6) months of potentially accrued flex leave time to be used for illnesses only. If employee terminates employment prior to six months, the City will subtract the pay equivalent of the number of flex leave days advanced from the employee's final check. Any flex leave time advanced during the first six months of employment will be subtracted from the six (6) months of accrual placed in the employees account upon completion of six months employment.

2. Limit on Accumulation

Employees may accrue flex leave up to an accumulated total equal to seventy eight (78) times the member's bi-weekly accrual rate. Any flex leave earned in excess of this level will be paid on an hour for hour basis in cash at the employee's hourly rate of pay. Members hired prior to July 1, 1996 shall be paid for earned flex leave in excess of the maximum permitted accrual at the member's hourly rate of pay. Members shall be eligible for flex leave spillover pay only if they have utilized at least eighty (80) hours of flex leave the previous calendar year. Employees who have not utilized the required amount of leave the prior calendar year shall not be eligible to accrue time above the maximum accrual limit.

Employees first hired, or rehired by the City subsequent to July 1, 1996 shall not be eligible for flex leave spillover pay and shall not be entitled to accrue flex leave in excess of the flex leave accrual threshold.

3. Method of Use

Flex leave may not be taken in excess of that actually accrued and in no case, except for illness, may it be taken prior to the completion of an employee's initial probationary period.

The Department Director shall approve all requests for flex leave taking into consideration the needs of the Department, and whenever possible the seniority and wishes of the employee. Flex leave may be granted on an hourly basis. Any fraction over an hour shall be charged to the next full hour.

B. Vacation

1. Basis for Accrual/Full-Time Employees

Employees entitled to vacation leave-with-pay shall accrue such leave based on years of continuous service and the number of hours in a normal workweek for the position to which they are assigned in accordance with the following schedule:

<u>Years of Continuous Service</u>	<u>Accrual Per Pay Period</u>
0 but less than 5	3.38
5 but less than 9	3.99
9 but less than 12	4.61
12 but less than 16	5.22
16 but less than 20	5.84
20 but less than 25	6.46
25 and over	7.07

2. Limit on Accumulation

Accrual of vacation days in excess of those earned for two years of continuous service is not permitted past December 31st of each year with the following exception: with approval of the Department Director, an employee may accrue vacation days in excess of the two-year limit provided all such excess accumulation is taken by March 31st of the following year.

3. Method of Use

Vacation may not be taken in excess of that actually accrued and in no case, except for entry-level employees, may it be taken prior to the completion of an employee's initial probationary period. Entry level employees may use vacation after the completion of the initial six (6) months of probation. The Department Director shall schedule and approve all vacation leaves for employees taking into consideration the needs of the Department, and whenever possible, the seniority and wishes of the employee. Vacation leave may be granted on an hourly basis.

C. Use of Flex and Vacation Leave

Level A staffing shall run from June 15th through Labor Day. During this period of time, full-time personnel may be limited to a total of forty (40) hours usage of vacation/flex leave. Additional vacation/flex leave during this period may be approved if, in the opinion of management, adequate staffing levels can be maintained.

The Department shall develop a policy defining when approved vacation/flex leave times shall not be subject to cancellation.

The City will budget eighty (80) hours of overtime per employee per year for vacations/flex leave backfill. Concurrently, the City and NBLMA will jointly review procedures defining minimum staffing and the hours for night call out. Any changes to these areas fall within the scope of representation and will be subject to the meet and confer process.

D. Sick Leave

1. Basis for Accrual/Full-time Employees

Full-time, regular employees shall accrue sick leave based on the number of hours in a normal workweek for the position to which they are assigned in accordance with the following schedules:

Normal Work Week
40 hours

0- - 1 year	4 hours per month
1-2 years	5 hours per month
2-3 years	6 hours per month
3-4 years	7 hours per month
4+ years	8 hours per month

After the 3rd year level, and the 5th year level, employees will be required to maintain the same number of hours as required of other permanent employees.

Employees accruing sick leave hours under the above formula and enrolled in the City's Disability Program will be eligible for City-paid Disability Insurance premiums as follows: 50% at 88 hours, 100% at 208 hours.

2. Method of Use

a. General

Sick leave may not be taken in excess of that actually accrued. Except as noted, an employee serving his/her initial probation period is eligible to use his/her accumulated sick leave provided that if for any reason his/her City employment is terminated prior to the completion of such probationary period, his/her final pay check shall be reduced by the value of the sick leave he/she has taken. After completion of the initial six (6) months probation period, entry-level employees shall not have used sick leave deducted from their final pay check if they have maintained a satisfactory or higher performance evaluation rating throughout the probationary period.

Sick leave may be granted on an hourly basis.

b. Approval

Sick leave may be granted only at the direction of or with the approval of the Department Director and only for the purposes defined in Section 11.2.A of the Employee Policy Manual.

3. Sick Leave Conversion

Employees who at the end of the calendar year have an accrued level of sick leave equal to or greater than the full value of 40 months of accrued sick leave, and who have used six or less days of sick leave during the calendar year will be permitted (only once per year) to convert up to six days of sick leave to either salary or paid vacation at the value of 50% (Maximum value of 3 days per year). Eligible sick leave days converted to cash shall be at the employee's option. Eligible sick leave days converted to paid vacation shall require the approval of the Department Director.

E. Family Sick Leave

Unit employees shall be entitled to use an amount of time equal to one-half (1/2) of their annual sick leave accrual for an illness of a dependent which requires the presence of the employee. Such time may be taken from the employee's annual sick leave accrual or sick leave bank, at the employee's choice. Leave shall be administered in accordance with the provisions of Section 11.2 of the Employee Policy Manual. The provisions of this section shall not be construed to affect or reduce the right of any employee to any unpaid family medical leave authorized by State or Federal law.

For purposes of family sick leave, family member shall mean spouse, parent, (parent shall mean biological, foster, or adoptive), child (child shall mean biological, adopted, or foster child; a stepchild; a legal ward; or a child of an employee standing in local parentis).

F. Holiday Time

Subject to the provisions herein, the following days shall be observed as paid holidays by all employees in permanent positions and other personnel whose work assignments, in the judgment of the Department Director, require their presence on the job. For each designated holiday, except the Floating Holidays, such personnel shall receive an equivalent number of hours of paid leave or equivalent pay whichever in the judgment of the Department Director best serves the interest of the Department.

Independence Day	July 4
Labor Day	1st Monday in September
Veteran's Day	November 11
Thanksgiving Day	4th Thurs. in November
Friday following Thanksgiving	
Christmas Eve	Last 1/2 of working day
Christmas	December 25
New Year's Eve	Last 1/2 of working day
New Year's Day	January 1
Martin Luther King Day	3 rd Monday in January
Washington's Birthday	3 rd Monday in February
Memorial Day	Last Monday in May
Floating Holiday (1)	For employee's birthday or other holiday.
	Eligibility and use according to Memorandum of Understanding.

1. Holiday pay will be paid only to employees who work their scheduled day before the holiday and scheduled day after a holiday or are on authorized

leave (e.g., approved vacation, sick leave, or flex leave that has been reviewed and approved by the Department Director).

2. Newly hired employees will be eligible to receive full pay for scheduled holidays, without a waiting period.
3. "Floating Holiday" eligibility allows for newly hired employees to earn their first floating holiday credit, eight (8) hours, at the same time as they receive their regular appointment status, upon the successful completion of their probationary period.
4. In July, 2003 all employees were provided a one-time opportunity to elect to convert all or any portion of their annual holiday benefits to cash on an annual basis. This election shall be uniform from year to year. For example, an employee electing to convert 48 of the 96 hours of the annual benefit to cash must so convert 48 hours of earned holiday benefits each year thereafter. Holiday pay will be paid bi-weekly with the regular check. Holiday leave conversion pay will not count in the total compensation formula used to adjust salaries and benefits.

Employees hired after July 2003 will make this election at the time of hire.

This holiday compensation shall be reported to PERS as special compensation and shall be regarded as compensation earnable as defined in Government Code Sec. 20636 (c) (6) for purposes of computing retirement benefits and contributions.

G. Bereavement Leave

The provisions of the Bereavement Leave Policy applicable to affected employees are as follows:

Defined. The necessary absence from duty by an employee having a regular or probationary appointment, because of death or terminal illness in his/her immediate family. For the purposes of this section, immediate family shall mean father, mother, brother, sister, wife, husband, child, or grandparents and the employee's spouses' father, mother, brother, sister, and child.

Maximum Allowed. Such leave shall be limited to five (5) working days per calendar year per occurrence.

Probationary Employees. An employee serving his/her initial probationary period who takes leave under this section who for any reason terminates his/her employment prior to the completion of such probationary period shall have his/her final pay check reduced by the value of the leave taken.

H. Sick Leave Pay Out

Upon paid retirement, termination in good standing or death, but not termination for cause or resignation in lieu of termination, any member or his/her estate shall be paid for a percentage of the employee's accrued but unused Sick Leave computed as follows:

YEARS OF SERVICE:	PERCENT OF UNUSED SICK LEAVE PAID FOR:
LESS THAN 10	NONE
10 BUT LESS THAN 15	25%
15 BUT LESS THAN 20	37.5%
20 OR MORE	50%

Payment for accrued but unused Sick Leave shall be limited to the first 800 hours of accrued Sick Leave for Staff Employees and the first 1200 hours for Line Employees (for example if a Line Employee had accumulated 1400 hours of Sick Leave and retired after 16 years he or she would receive Terminal Sick Leave Pay in a sum equal to 109% of their base salary per hour for 450 hours of Sick Leave – 1200 hours multiplied by .375).

I. Leave Pay-Off

NBLMA members shall receive payment for any accrued leave upon termination at the rate of 109% of their base hourly rate. Effective October 1, 2010, payment for accrued leave will be at 100% of the base hourly rate.

SECTION 4. FRINGE BENEFITS

A. Insurance

1. Benefits Information Committee

City has established a Medical/Dental Information Committee composed of one representative from each employee group and up to three City representatives. The Medical/Dental Information Committee has been established to allow the City to present data regarding carrier and coverage options, the cost of those options, appropriate coverage levels and other health care issues. The purpose of this Committee is to provide each employee group with information about health care issues and to receive timely input from associations regarding preferred coverage options and levels of coverage.

2. City Contribution

The City has implemented an IRS qualified Cafeteria Plan. NBLMA members shall participate in this plan. The City contribution toward the Cafeteria Plan shall be as set forth below. Employees shall have the option of allocating Cafeteria Plan contributions towards the City's existing medical, dental and vision insurance/programs. The City and the Newport Beach Lifeguard Management Association will cooperate in pursuing additional optional benefits to be available through the Cafeteria Plan.

Any unused Cafeteria Plan funds shall be payable to the employee as taxable cash back. Employees shall be allowed to change coverages in accordance with plan rules and during regular open enrollment periods.

Effective the pay period beginning December 20, 2008, the City's contribution towards the Cafeteria Plan increases to \$974 (plus the minimum CalPERS participating employer's contribution).

Effective the pay period beginning December 19, 2009, the City's contribution towards the Cafeteria Plan will increase to \$1049 (plus the minimum CalPERS participating employer's contribution).

LMA members who do not want to enroll in any medical plan offered by the City must provide evidence of group medical insurance coverage, and execute an opt-out agreement releasing the City from any responsibility or liability to provide medical insurance coverage on an annual basis.

3. Dental Insurance

The existing or comparable dental plans shall be maintained as part of the City's health plan offerings as agreed upon by the Benefits Information Committee.

4. Vision Insurance

The existing or a comparable vision plan shall be maintained as part of the City's health plan offerings as agreed upon by the Benefits Information Committee.

B. Additional Health Insurance/Programs

1. IRS Section 125 Flexible Spending Account

Section 125 of the Internal Revenue Code authorizes an employee to reduce taxable income for payment of allowable expenses such as child care and medical expenses. The City shall maintain a "reimbursable

account program" in accordance with the provisions of Section 125 of the Internal Revenue Code, pursuant to which an Association member may request that medical, child care and other eligible expenses be paid or reimbursed by the City out of the employee's account. The base salary of the employee will be reduced by the amount designated by the employee for reimbursable expenses.

2. Disability Insurance

The City shall provide Short-term (STD) and Long-term (LTD) disability insurance to all regular full time employees with the following provisions:

Weekly Benefit	66.67% gross weekly wages
Maximum Benefit	\$10,000/month
Minimum Benefit	\$50
Waiting Period	30 Calendar Days

Employees shall not be required to exhaust accrued paid leaves prior to receiving benefits under the disability insurance program. Employees may not supplement the disability benefit with paid leave once the waiting period has been exhausted.

Concurrent with the commencement of this program, employees assumed responsibility for the payment of the disability insurance cost in the amount of one (1.0%) percent of base salary. Simultaneously, the City increased base wages by one (1.0%) percent.

3. Life Insurance

The City shall provide life insurance for all regular full-time employees in \$1,000 increments equal to one times the employee's annual salary up to a maximum of \$50,000. At age 70 the City-paid life insurance is reduced by 50% of the pre-70 amount. This amount remains in effect until the employee retires from City employment.

C. Employee Assistance Program

City shall provide an Employee Assistance Program (EAP) through a properly licensed provider. Association members and their family members may access the EAP subject to provider guidelines.

D. The Retirement Benefit

1. Pursuant to Section 20691 of the California Government Code, the City shall pay to PERS, on behalf of all employees covered by this agreement and hired before May 25, 2010, the entire required normal "safety member" retirement contribution, but not to exceed 9% of the compensation earnable which PERS uses to calculate retirement contributions and benefits. For employees hired after May 25, 2010 the City will pay 3.5% of the member contribution. Such employees will be eligible to receive the 9% the beginning of their 6th year of uninterrupted service. In addition, the amount of this payment shall be reported to PERS as special compensation, which is part of the employee's compensation earnable, pursuant to the provisions of Section 20636 (c)(4) of the California Government Code, as amended effective July 1, 1994. This payment shall be credited to the employee's accounts maintained by PERS in accordance with Section 20691 of the California Government Code. NBLMA acknowledges that the City is making this payment pursuant to a specific request of NBLMA to do so, that the City has made significant financial commitments to NBLMA in this MOU in consideration of the members' agreement to relinquish their previously held "irrevocable right" to pay their own PERS contribution and receive a corresponding salary increase, and that the significant financial concessions to NBLMA (which included Leave Premium Pay Accounts, changes in the calculation of "hours worked" for purposes of overtime and internal salary adjustments) were made to avoid the potential for increased overtime compensation approximating \$450,000 if all NBLMA members exercise their irrevocable right to make their own PERS contribution and receive a corresponding salary increase.
2. The City's contract with PERS also provides for:
 - a. A 3% @ 50 retirement formula pursuant to the provisions of Section 21252.01 of the California Government Code.
 - b. The military buy-back provisions pursuant to Section 20930.3 of the California Government Code and the highest year benefit pursuant to Section 20042.
 - c. The Level 4 1959 Survivors Benefits.
 - d. The pre-retirement option settlement 2 death benefit (Section 21548).
3. Effective February 27, 2010, all employees will contribute 3.5% of base pay towards retirement costs. This payment will be made on a pre-tax basis through payroll deduction pursuant to IRS Code Section 414(h)(2).

This contribution will not affect the reporting of the 9% EPMC for employees hired before May 25, 2010 (Section 20636)(c)(4) of the California Government Code.

E. Retiree Health Benefits Program

1. Background

In 2005, the City and all Employee Associations agreed to replace the previous "defined benefit" retiree medical program with a new "defined contribution" program. The process of fully converting to the new program will be ongoing for an extended period. During the transition, employees and (then) existing retirees have been administratively classified into one of four categories. The benefit is structured differently for each of the categories. The categories are as follows:

- a. Category 1 - Employees newly hired after January 1, 2006.
- b. Category 2 - Active employees hired prior to January 1, 2006, whose age plus years of service as of January 1, 2006 was less than 50 (46 for public safety employees).
- c. Category 3 - Active employees hired prior to January 1, 2006, whose age plus years of service was 50 or greater (46 for public safety employees) as of January 1, 2006.
- d. Category 4 - Employees who had already retired from the City prior to January 1, 2006, and were participating in the previous retiree medical program.

2. Program Structure

This is an Integral Part Trust (IPT) Medical Expense Reimbursement Program Plan (MERP).

- a. For employees in Category 1, the program is structured as follows:

Each employee will have an individual MERP account for bookkeeping purposes, called his or her "Employee Account." This account will accumulate contributions to be used for health care expense after separation. All contributions to the plan are either mandatory employee contributions or City paid employer contributions, so they are not taxable to employees at the time of deposit. Earnings from investment of funds in the account are not taxable when posted to the account. Benefit payments are not taxable when withdrawn, because the plan

requires that all distributions be spent for specified health care purposes.

Contributions will be in three parts.

Part A contributions (mandatory employee contributions): 1% of Salary.

Part B contributions (employer contributions): \$1.50 per month for each year of service plus year of age (updated every January 1st based on status as of December 31st of the prior year). Effective January 2008, this contribution will increase to \$2.50 per month.

Part C contributions (leave settlement as determined by Association):

The Association will determine the level of contribution for all employees it represents, subject to the following constraints. All employees within the Association must participate at the same level, except that Safety members and Non-safety members within an Association may have different levels. The participation level should be specified as a percentage of the leave balance on hand in each employee's leave bank at the time of separation from the City.

For example, if the Association wishes to specify 50% of the leave balance as the participation level, then each member leaving the City or cashing out leave at any other time, would have the cash equivalent of 50% of the amount that is cashed out added to the MERP, on a pre-tax basis. The remaining 50% would be paid in cash as taxable income. Individual employees would not have the option to deviate from this breakout.

The Association has decided to participate in Part C contribution, at the level of zero percent (0%). This amount may be changed, on a go forward basis, as part of the future meet and confer process. However, the participation level must be the same for all employees within the Association except that Safety members and Non-safety members within an Association may have different levels. Additionally, the purpose and focus of these changes should be toward long-term, trend type adjustments. Due to IRS restrictions regarding "constructive receipt," the City will impose restrictions against frequent spikes or drops that appear to be tailored toward satisfying the desires of a group of imminent retirees.

Spillover pay is not eligible for Part C contributions.

Nothing in this section restricts taking leave for time off purposes.

Sick leave balances may also be included in the MERP Part C contributions, but only to the extent and within all the numeric parameters specified in the Employee Policy Manual. Section 11.21 of the Manual contains a schedule which specifies the amount of sick leave that can be "cashed out," based on time of service. The manual also caps the number of hours that can be "cashed out" at 800, and specifies that sick leave hours are "cashed out" on a 2 for 1 basis (800 hours of sick leave are converted to 400 hours for cash purposes). Sick leave participation is a separate item from vacation/flex leave participation, and thresholds must be separately identified by the Association.

Part A contributions may be included in PERS compensation. Part B and Part C contributions will not be included in PERS compensation.

Part A contributions begin upon enrollment in the program and are credited to each MERP Employee Account each pay period. Eligibility for Part B contributions is set at five years of vested City employment. At that time, the City will credit the first five years worth of Part B contributions into the Employee Account (interest does not accrue during that period). Thereafter, contributions are made bi-weekly. Part C deposits, if any, will be made at the time of employment separation.

Each Employee has a right to reimbursement of medical expenses (as defined below) from the Plan until the Employee Account balance is zero. This right is triggered upon separation. If an employee leaves the City prior to five years employment, only the Part A contributions and Part C leave settlement contributions, if any, will be in the MERP Employee Account. Such an employee will not be entitled to any Part B contributions. The exception to this is a full-time employee, participating in the program, who leaves the City due to industrial disability during the first five years of employment. In such cases, the employee will receive exactly five years worth of Part B contributions, using the employee's age and compensation at the time of separation for calculation purposes. This amount will be deposited into the employee's MERP account at the time of separation.

Distributions from MERP Employee Accounts are restricted to use for health insurance and medical care expenses after separation, as defined by the Internal Revenue Code Section 213(d) (as explained in IRS Publication 502), and specified in the Plan Document. In accordance with current IRS regulations and practices, this generally includes premiums for medical insurance, dental insurance, vision insurance, supplemental medical insurance, long term care insurance, and miscellaneous medical expenses not covered by insurance for the

employee and his or her spouse and legal dependents – again only as permitted by IRS Publication 502. Qualification for dependency status will be determined by guidelines in IRC 152. If used for these purposes, distributions from the MERP accounts will not be taxable. Cash withdrawal for any other purpose is prohibited. Under recent IRS Revenue Ruling 2005-24, any balance remaining in the Employee Account after the death of the employee and his or her spouse and/or other authorized dependents (if any) must be forfeited. That particular MERP Employee Account will be closed, and any remaining funds will become general assets of the plan.

The parties agree that the City's Part B contributions during active employment constitute the minimum CalPERS participating employer's contribution towards medical insurance after retirement. The parties also agree that, for retirees selecting a CalPERS medical plan, or any other plan with a similar employer contribution requirement, the required City contribution will be withdrawn from the retiree's MERP account.

- b. For employees in Category 2, the program is the same as for those in Category 1, with the following exception:

In addition to the new plan contributions listed above, current employees who fully convert to the new plan will also receive a one-time City contribution to their individual MERP accounts that equates to \$100 per month for every month they contributed to the previous "defined benefit" plan, to a maximum of 15 years (180 months). This contribution will be made only if the employee retires from the City and at the time of retirement. No interest will be earned in the interim.

Employees in Category 2 who had less than five years service with the City prior to implementation of the new program will only receive Part B contributions back to January 1, 2006 when they reach five years total service.

- c. For employees in Category 3, the program is the same as for those in Category 2, with the following exception:

For employees in this category, the City will make no Part B contributions while the employees are still in the active work force. Instead, the City will contribute \$400 per month into each of their MERP accounts after they retire from the City, to continue as long as the employee or spouse is still living.

Each employee will contribute a flat \$100 per month to the plan for the duration of their employment to partially offset part of this expense to the City. The maximum benefit provided by the City after retirement is \$4,800.00 per year, accruing at the rate of \$400.00 per month. There is no cash out option for these funds, and they may not be spent in advance of receipt.

Employees in this category will also receive an additional one-time City contribution of \$75 per month for every month they contributed to the previous plan prior to January 1, 2006, up to a maximum of 15 years (180 months). This contribution will be made to the MERP account at the time of retirement, and only if the employee retires from the City. No interest will be earned in the interim.

- d. For employees (retirees) in Category 4, the structure is very similar to the previous retiree medical program, except that there is no cost share requirement, and the \$400 City contribution after retirement can be used for any IRS authorized purpose, not just City insurance premiums.

Effective July 1, 2006, a MERP account has been opened for each retiree in this category, and the City will contribute \$400 per month to each account as long as the retiree or spouse remains living.

3. Administration

Vendors have been selected by the City to administer the program. The contract expense for program-wide administration by the vendor will be paid by the City. However, specific vendor charges for individual account transactions that vary according to the investment actions taken by each employee, such as fees or commissions for trades, will be paid by each employee.

The City's Deferred Compensation Committee, or its successor committee, will have the authority to determine investment options that will be available through the plan.

4. Value of Benefit

For all purposes, including compensation comparisons, the Retiree Medical Program shall be valued at 1% of salary on which PERS retirement is based (Part A); plus .25% of other compensation (Part B).

F. Tuition Reimbursement

NBLMA members attending accredited community colleges, colleges or universities may apply for reimbursement of one hundred percent (100%) of the actual cost of tuition, books, fees or other student expenses for approved job-related courses. Reimbursement is contingent upon the successful completion of the course. Successful completion means a grade of "C" or better for undergraduate courses and a grade of "B" or better for graduate courses. All claims for tuition reimbursement require the approval of the Human Resources Director.

LMA members attending pre-approved, directly job-related classes, courses and seminars given by recognized agencies, organizations or individuals other than accredited college institutions may apply for reimbursement of actual cost of tuition, books, fees or other student expenses. Reimbursement is contingent upon the successful completion of the course. Successful completion means a document or certificate showing successful completion of the course or seminar. All claims for reimbursement require the approval of Fire Chief or designee before submittal to Human Resources.

Maximum tuition reimbursement for employees shall be \$1,000.00 per fiscal year. Effective July 1, 2010 maximum reimbursement shall be increased to \$1,500.00 per fiscal year.

SECTION 5. MISCELLANEOUS PROVISIONS

A. Reductions in Force/Layoffs

The provisions of this section shall apply when the City Manager determines that a reduction in the work force is warranted because of actual or anticipated reductions in revenue, reorganization of the work force, a reduction in municipal services, a reduction in the demand for service or other reasons unrelated to the performance of duties by any specific employee. Reductions in force are to be accomplished, to the extent feasible, on the basis of seniority within a particular Classification or Series and this Section should be interpreted accordingly.

1. Definitions

- a. "Layoffs" or "Laid off" shall mean the non-disciplinary termination of employment.
- b. "Seniority" shall mean the time an employee has worked in a Classification or Series calculated from the date on which the employee was first granted permanent status in their current Classification or any Classification within the Series, subject to the following:

- i. Credit shall be given only for continuous service subsequent to the most recent appointment to permanent status in the Classification or Series;
- ii. Seniority shall include time spent on industrial leave, military leave and leave of absence with pay, but shall not include time spent on any other authorized or unauthorized leave of absence.
- c. "Classification" shall mean one or more full time positions identical or similar in duties and embraced by a single job title authorized in the City budget and shall not include part-time, seasonal or temporary positions. Classifications within a Series shall be ranked according to pay (lowest ranking, lowest pay).
- d. "Series" shall mean two or more Classifications within a Department which require the performance of similar duties with the higher ranking Classification(s) characterized by the need for less supervision by superiors, more difficult assignments, more supervisory responsibilities for subordinates. The City Manager shall determine those Classifications, which constitute a Series.
- e. "Bumping Rights", "Bumping" or "bump" shall mean the right of an employee, based upon seniority within a series, to displace a less senior employee in a lower Classification within the Series. No employee shall have the right to Bump into a Classification for which the employee does not possess the minimum qualifications such as specialized education, training or experience.

2. Procedures

In the event the City Manager determines to reduce the number of employees within a Classification, the following procedures are applicable:

- a. Temporary and probationary employees within any Classification shall, in that order, be laid off before permanent employees.
- b. Employees within a Classification shall be laid off in inverse order of seniority;
- c. An employee subject to layoff in one Classification shall have the right to Bump a less senior employee in a lower ranking Classification within a Series, provided, however, that the determination of the employee to be terminated from the position of Lifeguard shall be based on seniority within the Series. An

employee who has Bumping Rights shall notify the Department Director within seven (7) working days after notice of layoff of his/her intention to exercise Bumping Rights.

- d. In the event two or more employees in the same Classification are subject to layoff and have the same seniority, the employees shall be laid off in inverse order of their position on the eligibility list or lists from which they were appointed. In the event at least one of the employees was not appointed from an eligibility list, the Department Director shall determine the employee(s) to be laid off.

3. Notice

Employees subject to lay-off shall be given at least thirty (30) days advance notice of the layoff or thirty (30) days pay in lieu of notice. In addition, employees laid off will be paid for all accumulated paid leave, holiday leave (if any), and accumulated sick leave to the extent permitted by the Personnel Resolution.

4. Re-Employment

Permanent and probationary employees who are laid off shall be placed on a Department re-employment list in reverse order of layoff. The re-employment list shall remain in effect until exhausted by removal of all names on the list. In the event a vacant position occurs in the Classification which the employee occupied at the time of layoff, or a lower ranking Classification within a Series, the employee at the top of the Department re-employment list shall have the right to appointment to the position, provided, he or she reports to work within seven (7) days of written notice of appointment. Notice shall be deemed given when personally delivered to the employee or deposited in the U.S. Mail, certified, return receipt requested, and addressed to the employee at his or her last known address. Any employee shall have the right to refuse to be placed on the re-employment list or the right to remove his or her name from the re-employment list by sending written confirmation to the Human Resources Manager.

5. Severance Pay

Permanent employees who are laid off shall, as of the date of lay-off, receive one week severance pay for each year of continuous service with the City of Newport Beach.

B. Discipline

Any discipline shall be in accordance with the Department SOP and the Employee Policy Manual.

C. Health and Fitness Evaluations

All NBLMA members shall participate in the Department Fitness Program.

D. Provision for Sun Protection

1. The first full pay period of each fiscal year, the City will provide \$400 to each unit employee for sunglasses and other sun protection materials (not restricted to use at Lifeguard Store).
2. Each unit employee shall receive an annual skin cancer screening, which will be conducted either on or off duty at the Department's discretion. Employees directed to receive this screening off duty shall receive one (1) hour of compensatory time off as compensation.

E. Fitness Equipment and Exercise Time

At a time, during the life of this MOU, selected by NBLMA, the City will provide up to \$3,000.00 per year towards the purchase of fitness equipment to be used off duty for the intended benefit of NBLMA for the term of this agreement. The actual equipment to be purchased shall be recommended by NBLMA, and shall require the final approval of the Fire Chief. Unit employees shall be allowed up to three (3) hours per week for physical fitness training.

F. Lifeguard Officers Schedule

Lifeguard Officers shall continue to work a 4-10 schedule, unless the schedule is modified through standard departmental procedures.

G. Employee Policy Manual

The City and LMA have agreed on implementation of the City's revised Employee Policy Manual.

H. Direct Deposit

All Unit employees shall participate in the City's Direct Deposit Program.

I. Part-Time Conversion

Part-time Lifeguard IV employees converted to full-time status in January 2000 shall utilize their original Lifeguard IV hire date as their anniversary date. Any changes resulting from this change shall be prospective only.

Signatures are on the next page.

Executed this 25th, day of May, 2010:

NEWPORT BEACH LIFEGUARD MANAGEMENT ASSOCIATION

BY: Brent Jacobsen
Brent Jacobsen, President

BY: Brian O'Rourke
Brian O'Rourke, Vice President

CITY OF NEWPORT BEACH

BY: Keith Curry
Keith Curry, Mayor

ATTEST:

BY: Leilani L. Brown
Leilani Brown, City Clerk



APPROVED AS TO FORM:

Leonie Mulvihill 5.17.10
Leonie Mulvihill, Acting City Attorney

MB 5/17/10

EXHIBIT A

Newport Beach Lifeguard Management Association Represented Classifications

Lifeguard Officer

Lifeguard Captain

Lifeguard Captain - Boat

Lifeguard Captain - Dive

Lifeguard Battalion Chief

Lifeguard Battalion Chief - Dive